

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

JUDY LANCE d/b/a)
J&B DISCOUNT)
)
vs.)
)
OWNERS INSURANCE COMPANY)
)
)
PEOPLE'S BANK OF EAST)
TENNESSEE)
 Intervening Plaintiff)
)
vs.)
)
OWNERS INSURANCE COMPANY)

2013 FEB 14 PM 3:35

U.S. DISTRICT COURT
EASTERN DIST. TENN.
CASE NO. 1:13-cv-38
BY: CLERK
Collier / Carter

NOTICE OF FILING REMOVAL

Come now the petitioner's, Owners Insurance Company, by and through their attorneys, and respectfully show unto this Honorable Court as follows:

1. Petitioners are the only defendant named in the above entitled action.
2. On October 11, 2011, the original plaintiff, Judy Lance d/b/a J&B Discount filed an action in the Polk County Circuit Court, Ducktown Law Court, against original Defendant Owners Insurance Company. Owners Insurance Company attempted removal of that action on diversity jurisdiction but then withdrew the removal. The removal was based on diversity jurisdiction. However, the timing of the removal warranted the withdrawal of the removal.

3. This case involves a fire loss where the Defendant has denied the plaintiff's claim for payment under a commercial general liability policy. This claim results from a fire that destroyed the plaintiff's business. The denial is based upon evidence showing the fire is intentionally set.

4. People's Bank of East Tennessee, a Georgia Corporation, intervened in the Polk County Circuit Court to collect the mortgage it held on the property made the subject of the Plaintiff's complaint. Attached is a copy of their Intervening Complaint which is marked Exhibit 1. Also attached is a copy of a letter dated July 26, 2012, from the Bank's counsel to counsel for defendant Owners Insurance Company. In his letter counsel for the bank invokes 12 U.S.C. §1821 *et seq.* as a basis for the Bank's claim against Owners Insurance Company. This letter is marked Exhibit 2. Based upon the allegations of the complaint and counsel's letter it is clear that the litigation now involves the interpretation and application of 12 U.S.C. 1821 *et seq.* Therefore, the Court has jurisdiction as the claim involves a federal question.

5. The Bank's Intervening Complaint was filed and served upon the Defendant on January 16, 2013.

6. Owners Insurance Company is a Delaware corporation authorized to do business in the state of Tennessee. People's Bank of East Tennessee is a Georgia corporation authorized to do business in the state of Tennessee. Plaintiff Judy

Lance d/b/a J&B Discount is a resident of Polk County, Tennessee. The business J&B Discount was physically located in Polk County, Tennessee.

7. Owners Insurance Company denied the Bank's proof of loss because the name listed as loss payee on the declaration page is Appalachian Community Bank. Appalachian Community Bank failed, and its assets and liabilities were taken over by the FDIC. The FDIC sold the mortgage on the property in question to People's Bank of East Tennessee in December of 2010. The fire in question occurred on April 24, 2011. The policy of insurance states that the company will only pay the loss payee named in the declaration page. Based on the letter marked Exhibit 2, the Bank claims that under federal law they stepped into the shoes of Appalachian Community Bank. Research done by counsel for Owners Insurance Company indicates that there are many cases interpreting the statute as it is a complex issue of federal law. While the Intervening Complaint does not specifically cite the federal statute cited in Exhibit 2, it states that Peoples Bank of East Tennessee "stepped into the shoes" of Appalachian Community Bank in regards to this policy of insurance. It is clear from Exhibit 2 and the Intervening Complaint that the Bank intends to invoke federal statutory and case law in making its claim. Judy Lance d/b/a J&B Discount has not specified an amount of damages in her complaint but stated she is suing for the insurance coverage, bad faith penalty, attorney's fees and costs. The building and its contents are a total loss.

The insurance coverage on the building is \$1,295,400.00. The insurance coverage in the contents is \$691,690.00. The amount in controversy exceeds \$75,000.00 as evidenced by the Declarations Page from the policy of insurance attached as Exhibit 3.

8. The Complaint filed by People's Bank of East Tennessee does not state an amount sued for but asks for the amount of the mortgage, treble damages, interest, attorney's fees, punitive damages and expenses. The proof of loss filed by the Bank is in the amount of \$314,839.45. (This amount is derived from the notation on the proof of loss to see attached copy of declaration. The Commercial Loan and Security Agreement is for this amount. Further, counsel for the Bank has told counsel for the Defendant that the amount owed on this mortgage is in excess of the face amount of the note due to interest accumulating.) They further demanded bad faith penalties under Tennessee statute. Counsel contends that the amount sued for is in excess of the amount in controversy rule of \$75,000.00 as evidenced by the Declarations Page of the Policy of Insurance attached as Exhibit 3 and the Proof of Loss filed by the Bank attached as Exhibit 4.

9. This court has original jurisdiction of this action between the People's Bank of East Tennessee and Owners Insurance Company pursuant to federal question jurisdiction, 28 U.S.C. §1331. This court has original jurisdiction over the action styled ***Judy Lance d/b/a J&B Discount v. Owners Insurance Company***

pursuant to diversity jurisdiction, 28 U.S.C. §1332. Removal of this action to this court is proper pursuant to 28 U.S.C. §1441(a).

9. Venue is proper in this court as the United States District Court for East Tennessee embraces the County of Polk, State of Tennessee.

10. A copy of the original Complaint filed by Judy Lance d/b/a J&B Discount is also attached and marked Exhibit 5.

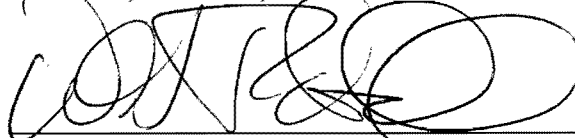
11. This court is the proper court to hear this matter as these cases are intertwined and judicial economy is best served by trying the case is together as opposed to separating the cases for trial. Both cases involve the same policy of insurance and arise out of the facts, transactions and occurrences leading up to the prosecution and filing of the claims both by the Bank and by Lance. Judicial economy is best served by prosecuting both claims in this Court.

12. This Notice is filed in this court within thirty (30) days after service of the summons of the Intervening Complaint by People's Bank of East Tennessee. Owners Insurance Company is the only defendant.

Wherefore, petitioners pray that the above entitled action be removed from the Circuit Court of Polk County, Tennessee, to this court.

Respectfully submitted,

JAMES, GOINS, CARPENTER & TIDWELL



By: W. Gerald Tidwell, Jr., BPR # 10136
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CERTIFICATE OF SERVICE

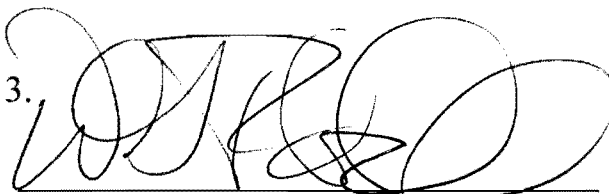
The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served upon the following individual(s) by placing same in the U.S. Mail or by hand delivery.

Robert G. Norred, Jr.
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Polk County Circuit Court Clerk
P.O. Box 256
Benton, TN 37307

This 14th day of February, 2013.



James, Goins, Carpenter & Tidwell